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Three years of assisted dying in Spain: Data, controversies and challenges

Tres años de la eutanasia en España: datos, controversias y retos

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Introduction

On 18 March 2021, the Spanish Congress of Deputies gave definitive approval to the Organic Law on the Regulation of Euthanasia (LORE) with 202 votes in favour, 141 against, and two abstentions. This new legal provision, which entered into force on 25 June 2021, made Spain the seventh jurisdiction in the world to decriminalise and regulate both euthanasia and medically assisted suicide.[1] On a previous occasion, we had the opportunity to compare in this journal the quantitative data from the first months of euthanasia implementation in Spain with figures from Canada and New Zealand.[2] After three years of the practice being implemented in Spain, we are now in a position to begin assessing the country's progress over time. In addition, during this period, various situations—some of which have not been strictly medical in nature—have influenced the functioning of the euthanasia system. It is therefore timely to provide an overview that not only updates the available national data but also examines the factors that have shaped its implementation and the challenges that remain. In this article, drawing on official annual reports, court rulings, and academic and journalistic sources, we analyse the key data, controversies and challenges surrounding the implementation of the law in Spain.

Data

Summary of applications

According to the three annual reports on assisted dying published to date by the Spanish Ministry of Health, which cover the period from 25 June 2021 to 31 December 2023, a total of 1515 requests for this healthcare service have been recorded in Spain. Of these, 697 have resulted in the provision of assisted dying.[3–5] In other words, approximately 46% of the applications have culminated in the performance of the assisted dying procedure. The remaining percentage corresponds to withdrawals, deferrals, refusals, and the death of applicants before the process could be completed. This latter group totals 374 individuals, representing nearly 25% of all applications; that is, one in four people who requested euthanasia died before the process was finalised.

It is also worth noting that the percentage of deaths due to euthanasia remains low in comparison with the total number of deaths in Spain. In 2021, euthanasia accounted for 0.01% of all deaths in the country, increasing to 0.06% in 2022 and 0.07% in 2023. These figures remain well below early projections, which estimated that assisted dying might account for up to 5% of all deaths, as is the case in the Netherlands and Canada.[6]

With regard to waiting times, excluding the first report (which does not specify whether the time elapsed between the application and the procedure refers to the mean or median), the weighted average waiting time for the available years is 70.8 days. It is important to highlight that between 2022 and 2023, the annual average waiting time decreased from 75.1 to 67 days.[4,5] This reduction could be viewed positively considering that, if every step of the process were carried out diligently, the legal timeframe would allow for the completion of a request for assisted dying in just over 35 days.[6]

As for the type of assisted dying, there is a clear predominance of euthanasia over medically assisted suicide in Spain. Excluding 2021 due to the lack of data, only around 3.81% of performed procedures have taken the form of medically assisted suicide.[4,5] In other countries, such as Portugal and Australia, euthanasia may only be administered if the person is physically incapable of carrying out a medically assisted suicide.[7,8] In contrast, Spain provides appli-

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cants with comparatively unrestricted access to both options. It is also notable that, despite the Ministry of Health's Good Practice Manual stating that medically assisted suicide may be carried out intravenously or orally, most have been performed via the intravenous route. These choices, which under Article 11.1 of the LORE lie with the applicant, may, among other things, reflect greater confidence in the effectiveness of the intravenous administration of lethal substances by a healthcare professional.

Applicants may also express a preference concerning the location of the assisted dying procedure. During the first two years, the applicant's home was the most frequent setting.[3,4] However, in 2023 this trend shifted slightly in favour of hospitals, with 159 procedures carried out in hospital settings compared to 147 at home.[5]

Profile of applicants

Regarding the sex of applicants, there is relative parity between men and women (the year with the greatest disparity was 2022, with 53.42% men and 46.58% women).[4] Unlike New Zealand's official assisted dying reports, those from Spain do not allow for the declaration of a non-binary gender identity. In all three years analysed, most applicants belonged to the 70–79 age group.[3–5]

In the first two reports, neurological conditions were the leading cause for requesting the provision of assisted dying in Spain. However, as anticipated by Albert Tuca,[10] Chair of the Catalan Review and Oversight Commission, cancer-related requests have now begun to slightly outnumber those related to neurological disorders. Indeed, in 2023, 271 applications were attributed to oncological diseases, compared to 266 involving neurological conditions.[5] Whether this trend stabilises or, contrary to international experience, neurological illnesses regain predominance remains to be seen in the coming years.

Finally, it is worth highlighting that, to date, 9% of individuals who received the assisted dying procedure expressed a wish to donate their organs after death.[3–5] This percentage aligns with estimates by Bollen et al.[11] in the Belgian context, in which they calculated that ä maximum of 10% of patients who request euthanasia could be potential donors of at least one organ..

Controversies

Assisted dying and the Spanish Constitution

On 16 June 2021, nearly three months after the definitive approval of the LORE, 50 MPs from the VOX Parliamentary Group lodged an appeal before the Constitutional Court challenging the law's constitutionality.[12] One of the main arguments presented by the appellants was that the LORE violated Article 15 of the Constitution, which protects the right to life. According to their claim, this right was to be understood as an absolute fundamental right from which all others derive and which must be protected even against the will of its holder.

After examining the appeal, the arguments of the State Legal Service, and the relevant case law, the Constitutional Court ruled that the right to life does not possess an absolute character. It stated that the decision to end one's own life "is one of the vital decisions protected by the right to personal self-determination, which derives from the fundamental rights to physical and moral integrity (Article 15 of the Constitution) in connection with the principles of dignity and the free development of personality (Article 10.1 of the Constitution)".[9] The Court also found that the LORE includes sufficient safeguards to ensure that the decision to end one's life is made freely, knowingly and consciously by a person in a situation of extreme suffering caused by a serious and irreversible illness or condition. Moreover, the Court held that these safeguards—because they are linked to the rights to integrity, dignity and self-determination—mean that the LORE upholds, rather than infringes, the right to life. It therefore concluded that the assisted dying law is fully legitimate and constitutional, and dismissed the appeal.

Assisted dying and pre-trial detention

Undoubtedly, one of the most controversial euthanasia cases to occur in Spain—and perhaps worldwide—over the past three years was that of Marin Sabau, widely known in the media as "the Tarragona gunman". Sabau was tetraplegic due to a severe spinal cord injury sustained in a shoot-out with police in 2021. After spending several months in pre-trial detention in a hospital's prison ward, he requested euthanasia. The attending physician, the consulting physician, and the relevant commission all determined that Sabau met the legal requirements for euthanasia, given his intense neuropathic pain and total dependency.[13]

However, the victims filed several appeals to prevent its application. The appellants argued that authorising euthanasia would imply a breach of the judicial obligation to ensure the presence of the person under investigation during the proceedings. In addition, they claimed that the rights to effective judicial protection and to compensation would be violated.[13]

The victims initially submitted their appeal to the Investigative Court, but it was dismissed. They then took the case to the Provincial Court of Tarragona, which also upheld the ruling. Given this outcome, they turned to the Constitutional Court, which also rejected their request. The main reasons behind these decisions were firstly that Sabau's pre-trial detention guaranteed his presence, and secondly that euthanasia is a health service outside the competence of criminal jurisdiction. Furthermore, it was argued that victims' right to access the courts is not absolute, nor is there an unconditional obligation to pass a criminal sentence. It was also pointed out that victims could claim civil compensation from Sabau's potential heirs. Sabau finally received euthanasia on 23 August 2022, almost a month after the originally scheduled date.[13]

Before the procedure could take place, one of the victims filed a complaint before the European Court of Human Rights, which agreed to consider the case but did not suspend the procedure. Two years later, largely following the reasoning of the Spanish courts, the European Court issued its ruling, dismissing the complaint.[14] The case not only garnered significant international attention but also established an important legal and bioethical precedent regarding the legitimacy of assisted dying for detainees.[13]

Assisted dying and mental disorders

Another major controversy during the three years since the Spanish assisted dying law was enacted has centred on the legal and ethical acceptability of allowing mental disorders to justify access to euthanasia. Under the LORE, it is possible to request assisted dying in the case of a "serious, chronic and incapacitating condition" (Article 3b) or a "serious and incurable illness" (Article 3c).[9] In other words, a limited life expectancy is not required; patients with chronic conditions who experience constant and intolerable suffering are also eligible.

When the Constitutional Court reviewed the appeal of unconstitutionality mentioned earlier, it briefly addressed this issue. Referring to the preamble of the LORE, the Court stated that "the 'suffering' defined in Article 3b) must always stem from a somatic illness or condition, even if the constant and intolerable suffering required by the law may be of a psychological nature".[9] In this context, the Court explicitly and fundamentally excluded psychiatric disorders as grounds for requesting assisted dying.

In this regard, it should be noted that the Constitutional Court's interpretation contradicted that of other judicial bodies. For instance, in 2022, the Administrative Chamber of the High Court of Justice of Navarre declared itself "in favour of not restricting the concept of suffering, and of including psychological suffering alongside physical pain".[15] Similarly, Administrative Court No. 4 of Valladolid implicitly recognised in the same year that mental illness could justify access to euthanasia, provided that the legal requirements were met and the necessary expert reports were available.[16]

Following the Constitutional Court's judgment, several experts expressed their disagreement. One such voice was Francesc José María Sánchez, Vice-Chair of the Catalan Oversight and Evaluation Commission, who argued that "the preamble does not carry normative weight, as the Constitutional Court itself has reminded us on numerous occasions".[17] The Andalusian Bioethics Committee also criticised the Court's position, stating that "mental illness can have a somatic or organic basis. The brain is an organ of the body and is susceptible to damage that can impair its functioning:.[18] Some have also argued that denying access to assisted dying to individuals suffering from mental illness breaches the principles of equality and non-discrimination.[19] In any case, there have been reports that the Ministry of Health is preparing to revise the Good Practice Manual in order to clarify the matter.

Assisted dying, dementia and advance directives

In October 2024, the Socialist Parliamentary Group presented a draft law on the right to issue advance directives. One of its aims was to adapt the legal framework to the provisions of the LORE. As Socialist MP Caridad Rives Arcayna stated, the initiative represented "a first step towards opening the debate and reaching consensus on an update—after 22 years—of advance directives, in order to strengthen the primacy of the individual's will and the protection of their dignity".[20] However, the draft law was ultimately rejected in Parliament.

At the same time, some autonomous communities have modified the requirements for issuing advance directives. In Catalonia, for example, since 2024 it has been possible to formalise this document before a healthcare professional, in addition to the pre-existing options of doing so before witnesses or a notary.[21]

Within this context, several perspectives have highlighted the need to amend Spain's current model for handling assisted dying requests through advance directives. When it comes to patients with dementia requesting assisted dying, certain factors arise that make changes to the current advance directive framework necessary.[22] Elsewhere,[23] we have explained in detail the disproportion between the safeguards required for requesting assisted dying with and without advance directives. We have also developed a series of arguments in favour of implementing specific safeguards for advance directives that request euthanasia in cases of dementia. These include: mitigating the risks associated with loss of decision-making capacity, reducing the impact of certain cognitive biases, maximising the patient's autonomy in choosing the right time to die, and increasing the potential psychotherapeutic effects of advance directives for the applicant and their loved ones.[23]

Challenges

Judicialisation of cases at the request of third parties

One of the main challenges facing Spain's assisted dying system is the judicialisation of applications by third parties. Although the "Tarragona gunman" case established that assisted dying is a healthcare service beyond the scope of criminal law, some individuals have still attempted to block approved applications.

At least three cases reported in the media have involved family members of individuals whose applications for assisted dying had been approved by medical professionals and the relevant commissions, yet were provisionally suspended through appeals lodged in the administrative courts.[24,25] In all of these cases, the families were legally supported by the ultra-Catholic organisation "Abogados Cristianos" ("Christian Lawyers"). In two of the three cases, the courts rejected the families' claims, but in one instance the court agreed to hear the case.[24,25]

Allowing a court to decide whether or not a healthcare service can be provided may have harmful consequences for the broader system of handling assisted dying applications. Firstly, when a request that has been approved by professionals and the relevant commission is brought before a court, there is a risk that factors unrelated to medical criteria—which should be paramount in any healthcare decision—may come into play. Furthermore, cross-examinations and evidentiary procedures can be physically and emotionally distressing for applicants, who are often already in a vulnerable state. Healthcare professionals themselves may feel criminalised and may suffer emotionally, a phenomenon some have termed the "clinical judicial syndrome",[26] or they may experience the effects associated with being a "second victim"[27] following adverse events in clinical practice. This is especially significant, as it could deter professionals from participating in the evaluation of assisted dying requests.

Access to the healthcare service

Another major challenge in Spain is ensuring adequate access to assisted dying. As noted in the data section, nearly one in four individuals who applied for the procedure died before the process could be completed. Some experts believe that this may be due to the option of assisted dying being presented to terminally ill patients at a very advanced stage of their illness.

In addition, access to the procedure may be hindered by doctors who receive requests but fail to declare conscientious objection. A qualitative study involving patients who applied for assisted dying in Spain found that undeclared conscientious objection constitutes a significant barrier to access[28]; an issue also identified by several regional oversight commissions.[29] Furthermore, as acknowledged by the Ministry of Health in its reports, the number of requests may be underreported due to cases in which the primary doctor is a conscientious objector and the applicant is unable to find another willing professional.

It is also important to recognise that the reasons professionals may have for not participating in these processes are not always based on conscience or personal values. As highlighted in a systematic review on the causes of conscientious objection in assisted dying, logistical or occupational factors may also play a role.[30] To prevent delays or failures in the proper processing of applications due to issues such as limited time or heavy administrative workloads, it is essential to provide healthcare professionals involved in these processes with appropriate working conditions. This need was identified during the initial months following the implementation of the LORE,[2] but much remains to be done.

Final considerations

Although Constitutional Court rulings have confirmed the law's full legality and constitutionality, this does not mean that improvements to the processing and practical implementation of the

assisted dying procedure cannot be made. As we have seen, requests arising in the context of imprisonment, mental health conditions and dementia present serious ethical and legal challenges, but these are not insurmountable. Similarly, the risk of judicialisation by third parties and potential barriers to accessing this healthcare provision must be addressed.

The provision of assisted dying in Spain is constantly improving, and gradually the oversight and evaluation commissions have improved their procedures. It is a process that requires ongoing feedback; two clear examples of this are the revision of the Good Practice Manual and the annual working meetings between commission chairs and the Ministry of Health. In this respect, the harmonisation of criteria, practices and information systems across Spain could benefit the overall application process. In particular, the accurate and comprehensive collection of data throughout the application process (including cases rejected at the initial stage by the attending physician), as well as the production of more detailed regional and national reports—aligned with international standards—is vital for the consolidation of the system.

Finally, it is worth noting that the Spanish model is increasingly being viewed as a point of reference abroad. It has influenced the drafting of assisted dying legislation in countries such as Portugal and the United Kingdom, particularly with regard to its system of prior evaluation by an interdisciplinary panel. This international recognition highlights the importance of building on what has been achieved so far, establishing Spain as a model of dignity and compassion in the bioethical and legislative management of end-of-life care.

Ethical considerations

The present work does not involve any experiments with living beings nor does it make use of data subject to protection under data privacy regulations.

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Declaration of competing interest

The author declares that he has no conflicts of interest that may have influenced the research.

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